

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL GINYARD, JR.)
)
)
Plaintiff,)
)
v.) Civil Action No. 20-1947
)
LOUIS DEL-PRETE, <i>Medical Clinic</i>)
<i>Manager at the Allegheny County Jail;</i>) District Judge W. Scott Hardy
LAURA K. WILLIAMS, <i>Chief Deputy</i>) Magistrate Judge Maureen P. Kelly
<i>Warden of Health Care at the Allegheny</i>)
<i>County Jail; ALLEGHENY HEALTH</i>)
<i>NETWORK, Medical Care Provider at</i>)
<i>the Allegheny County Jail,</i>)
)
Defendants.)

MEMORANDUM ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) entered by Magistrate Judge Maureen P. Kelly on July 9, 2021. (Docket No. 38). The R&R recommends that: (1) the Motion to Dismiss filed by Defendants Louis Del-Prete, Allegheny County Jail Medical Clinic Manager, and Laura K. Williams, Allegheny County Jail Chief Deputy Warden of Heath Care (the “ACJ Defendants”) (Docket No. 23) be denied in all respects; and (2) the Motion to Dismiss filed by Defendant Allegheny Health Network (“AHN”) (Docket No. 25) be granted. (See Docket No. 38 at 1, 13). Service of the R&R was made on the ACJ Defendants and AHN through the Court’s CM/ECF system, and they were advised that any objections to same were due by July 23, 2021. Service of the R&R was made on Plaintiff by mail, and he was informed that any objections were due by July 26, 2021. Thereafter, no party filed any objections to the R&R.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district

judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(2), (b)(3); 28 U.S.C. § 636(b)(1). Here, however, because no party filed any objections to the R&R, which explicitly stated that failure to file timely objections “will waive the right to appeal,” (Docket No. 38 at 14), this Court reviews the magistrate judge’s decision for plain error. *See Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006); *see also* Fed. R. Civ. P. 72(b), Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

In this case, upon careful review of the R&R and the entire record, including Plaintiff’s Complaint, Defendants’ Motions to Dismiss and supporting briefs, and Plaintiff’s responses thereto, (Docket Nos. 6, 23, 24, 25, 26, 28, 29, 30, 31), and finding no plain error on the face of the record, the Court will accept Judge Kelly’s recommendations. As such, the Court will adopt the R&R as the Opinion of the Court, and will deny the ACJ Defendants’ Motion to Dismiss and grant AHN’s Motion to Dismiss as more specifically set forth below.

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 6th day of August, 2021,

IT IS HEREBY ORDERED that the R&R (Docket No. 38) is ADOPTED as the Opinion of the Court.

For the reasons set forth in the R&R, IT IS FURTHER ORDERED as follows:

- (1) the Motion to Dismiss filed by the ACJ Defendants (Docket No. 23) is DENIED in its entirety;
- (2) the Motion to Dismiss filed by Defendant AHN (Docket No. 25) is GRANTED. Given this disposition, Defendant AHN’s alternative motion to strike Plaintiff’s claims for

punitive damages and a specific amount of compensatory damages and its motion to dismiss Plaintiff's request for injunctive relief are DENIED AS MOOT; and,

(3) Plaintiff is permitted to file an amended complaint as to his *Monell* claim against AHN.

To the extent Plaintiff elects to do so, his amended complaint must be filed by **September 8, 2021**. Otherwise, Plaintiff's claims against AHN will be dismissed with prejudice.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record

Michael Ginyard, Jr. (via U.S. Mail)
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